



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

July 30, 2009

Lance Olson
Olson, Hagel & Fishburn LLP
555 Capitol Mall, Suite 1425
Sacramento, CA 95814

Re: Warning Letter - FPPC No. 05/169, Jeff Grover

Dear Mr. Olson:

On March 7, 2005, we received a letter dated March 4, 2005, from the attorney for then Chairman of the Stanislaus County Board of Supervisors (the "Board"), Jeff Grover, voluntarily reporting that he violated the conflict of interest provisions of the Political Reform Act (the "Act")¹. Specifically, the letter set forth the facts that indicate Mr. Grover violated the Act on January 11, 2005, by voting on the application of Gerry Hughes, a named party who was a source of income to him. We have concluded our review and are sending this letter to advise you of our resolution of this matter with respect to your client, Mr. Grover.

Under Section 87100, a conflict of interest exists when a public official, makes, participates in making, or attempts to use his/her official position to influence a governmental decision in which he/she knows or has reason to know he/she has a "financial interest." A public official has a "financial interest" in a decision, within the meaning of Section 87100, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his/her immediate family, or, among other things, on any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. (Section 87103, subd. (c).) (Emphasis added.) In the case of a business entity, an official's income includes his or her pro-rata share of income to any business entity in which the official owns, directly or indirectly, or beneficially, a 10% interest or greater. (Section 82030, subd. (a).)

As a Stanislaus County Board of Supervisor, Mr. Grover was a public official on January 11, 2005, within the meaning of the Act. (Section 82048; Regulation 18701.) The Board agenda and minutes for the January 11, 2005 meeting demonstrate that Mr. Grover voted on a project involving Mr. Hughes on January 11, 2005. (Regulation 18702.1) According to information provided by Mr. Grover's attorney, during the 12 month period prior to January 31, 2005, Nexus Engineering, Inc., a

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Lance Olson
July 30, 2009
Page 2

business entity in which Mr. Grover had 76% interest, invoiced and/or received payment for \$13,610 in services from Gerry Hughes for 5 projects. Mr. Grover's 76% pro-rata share of this amount was \$10,343.60, greater than \$500. Therefore, Mr. Grover had an economic interest in Mr. Hughes as a source of income. (Regulation 18703.3)

Mr. Hughes was directly involved in the decision before the Board on January 11, 2005, because he was an applicant for rezoning and a named party in the matter. (Regulation 18704.1) The materiality standard applicable to a source of income that is directly involved is the 'one penny rule.' As such, any reasonably foreseeable financial effect involved in a decision related to Gerry Hughes before the Board was deemed material for Mr. Grover. Therefore, when Mr. Hughes' rezoning application came before the Board on January 11, 2005, Mr. Grover had a direct financial interest in the decision on which he voted, and he had a conflict of interest for which he should have recused himself.

However, based on the fact that: 1) as soon as Mr. Grover became aware of the business relationship between Mr. Hughes and Nexus Engineering Inc., he contacted the County Counsel, requesting an investigation into whether he had voted as a member of the Board of Supervisors involving Mr. Hughes or any other clients; 2) once County Counsel determined Mr. Grover had voted on a Hughes matter while serving as a Supervisor, Mr. Grover retained an attorney to remedy his violation, and informed his attorney that he wanted to submit any violation to the Fair Political Practices Commission for resolution. Subsequently, the information was voluntarily disclosed to us at Mr. Grover's request; 3) Mr. Grover's vote was not necessary to approve Mr. Hughes' rezone application, as the vote was unanimous; and 4) in an effort to further mitigate the violation, on March 22, 2005, the Board of Supervisors re-voted on Mr. Hughes' rezone application originally voted on by the board on January 11, 2005, with Mr. Grover abstaining from voting on the matter, we have determined not to prosecute Mr. Grover, and have closed our file in this matter.

Nevertheless, please be advised that Mr. Grover's failure to properly comply with the conflict of interest provisions of the Act in the future could result in an enforcement action being brought against him. In addition, the circumstances of this case may be used as aggravating information in any future prosecution we may bring against Mr. Grover for violations of the Act.

If Mr. Grover needs guidance regarding his obligations, please advise him that he may call the FPPC's Technical Assistance Division at 1-866-275-3772. He may also visit our website at www.fppc.ca.gov. If you or Mr. Grover have any questions regarding this letter or our resolution of this matter, please contact me at (916) 322-5660.

Sincerely,

Margaret E. Figeroid
Margaret E. Figeroid
Commission Counsel
Enforcement Division